

# HOUSE BILL REPORT

## HB 1493

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**As Reported by House Committee On:**  
Natural Resources, Ecology & Parks

**Title:** An act relating to the purchase of tidelands and shorelands and authorizing the sale of nonriparian state-owned filled tidelands or shorelands, that are currently upland in nature and no longer provide the ecological functions and public benefits normally intrinsic to functioning aquatic lands as described in RCW 79.90.450 and 79.90.455.

**Brief Description:** Allowing certain state-owned filled tidelands and shorelands to be designated as aquatic investment properties.

**Sponsors:** Representatives B. Sullivan, Upthegrove, Buck, Orcutt and Eickmeyer; by request of Commissioner of Public Lands.

**Brief History:**

**Committee Activity:**

Natural Resources, Ecology & Parks: 2/1/05, 2/15/05 [DPS].

**Brief Summary of Substitute Bill**

- Authorizes the Board of Natural Resources (Board) to designate certain state-owned filled tidelands and shorelands as aquatic investment properties.
- Authorizes the Department of Natural Resources (DNR), with approval from the Board, to purchase functioning aquatic lands and filled lands.
- Directs the DNR to adopt rules containing evaluation criteria for determining when state-owned lands may be designated aquatic investment properties and managed for revenue or sold.
- Creates the aquatic sustaining investment account and moneys received from the sale or lease of aquatic investment properties must be deposited in the account and may only be used for the acquisition and improvement of functioning aquatic lands and filled lands.

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**HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.  
Signed by 11 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Buck,

Ranking Minority Member; Kretz, Assistant Ranking Minority Member; Blake, DeBolt, Dickerson, Eickmeyer, Hunt, Orcutt and Williams.

**Staff:** Jeff Olsen (786-7157).

**Background:**

The Department of Natural Resources (DNR) manages over two million acres of state-owned aquatic lands. Aquatic lands management must provide a balance of public benefits including direct public use and access, fostering water-dependent uses, ensuring environmental protection, and use of renewable resources.

Except for sales to public entities, first and second class tidelands and shorelands and waterways may not be sold after August 9, 1971. The prohibition does not include the sale or exchange of beds and shorelands where the water course has changed and the area now has the characteristics of uplands.

Moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from these lands is deposited in the aquatic lands enhancement account. After deductions for management expenses and payments to towns for qualifying leases, moneys from the account may only be used for: aquatic lands enhancement projects; purchase or improvement of aquatic lands for public purposes; providing and improving access; and, volunteer cooperative fish and game projects. The Board of Natural Resources (Board) determines the amount of management funding necessary to achieve the purposes prescribed by law and provides by rule the amount that may be deducted from moneys received from leases, sales, and other sources. Deductions may not exceed 25 percent of the money received in any one transaction pertaining to state aquatic lands other than second class tide and shore lands and the beds of navigable waters, and 50 percent of the moneys received pertaining to second class tide and shore lands and the beds of navigable waters. Management funds are deposited in the resource management cost account.

When the DNR decides to offer tidelands or shorelands for lease, they must notify the upland owner that the property will be leased, include a description of the property and the appraised fair market value, and notify the owner of their right to apply to lease the lands at fair market value. The upland land owner has a period of 60 days from the mailing of the notice to respond to the offer.

An incorporated city, town, or metropolitan park district may apply to the DNR for the use of state-owned tide or shore lands within its limits for municipal park or playground purposes. When an application is received by DNR, the Governor appoints a committee of five citizens of the city or town, in addition to the Commissioner of Public Lands (Commissioner) and the Director of the Department of Ecology, to determine whether the lands are suitable for that need. If the committee determines the lands are suitable, the Commissioner shall certify to the Governor that the lands shall be deeded to the city, town, or park district as long as the lands are maintained for those purposes. If suitable state-owned lands are not available, the committee may find and recommend other lands, and the DNR is authorized to exchange state-owned tide or shore lands to secure the use of the alternate land.

The DNR shall grant the use of state-owned aquatic lands for public parks or public recreation purposes without charge if the aquatic lands and improvements are available to the general public on a first-come, first-served basis, and are not managed to produce a profit for the operator.

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**Summary of Substitute Bill:**

The (DNR), with approval from the Board, is authorized to purchase functioning aquatic lands or filled lands. Functioning aquatic lands or filled lands are lands below the ordinary high tide in tidal waters or ordinary high water on navigable rivers and lakes that provide for important ecological functions or public benefits. The DNR must maintain or increase the state-owned aquatic land base over time. By December 31 of each even numbered year, the DNR must provide a report to the Board on the acquisitions and disposals of aquatic investment properties. If the report shows that a net acreage reduction to the state-owned aquatic lands base has occurred, the authority to sell aquatic investment properties is suspended until the land base is restored.

The DNR may request that the Board designate certain state-owned filled tidelands and shorelands as aquatic investment properties. Aquatic investment properties are upland in nature and no longer provide ecological functions and public values normally intrinsic to functioning aquatic lands. Aquatic investment properties may be designated at the time of purchase and must be filled to an elevation above ordinary high tide or ordinary high water; are incapable of providing public benefits as aquatic land; and, have greater potential for long-term economic gain as an aquatic investment property. Tidelands and shorelands that are not filled, but diked, may not be designated as aquatic investment properties.

Aquatic investment properties may be sold for no less than fair market value. Properties may only be sold if it does not abut properly functioning aquatic lands and the DNR determines through an economic analysis that selling the property is economically more advantageous than keeping it. The DNR may charge the reasonable direct administrative costs incurred in processing the sale including staff time, travel and contracted services. Administrative costs recovered by the DNR must be deposited in the resource management cost account.

When leasing designated aquatic investment properties, the lease is not subject to notification provisions for owners of upland property stating the aquatic investment property will be leased and the owner has a preference for leasing the property. Incorporated cities, towns, or municipal park districts may not use a committee of citizens appointed by the Governor to use or exchange aquatic investment properties for municipal park or playground purposes. Aquatic investment properties are not subject to the free use provisions for public parks and recreational purposes.

Aquatic investment properties may be managed primarily for revenue generation. After deducting management costs established by the Board and payments to towns for qualifying aquatic leases, 25 percent of the revenues from the lease of aquatic investment properties must be deposited in the new aquatic sustaining investment account. Moneys received by the DNR

from the sale or lease of aquatic investment properties must be deposited in the new account. Expenditures from the account may only be used for acquisition of functioning aquatic lands, filled lands that were formerly below ordinary high tide or ordinary high water, and improvements associated with these lands. The new account will receive its proportionate share of earnings based upon the average daily balance of the fund.

The DNR must adopt rules containing evaluation criteria for determining when state-owned aquatic lands may be designated as aquatic investment properties. In addition, the DNR must adopt rules and criteria for determining whether an aquatic investment property should be retained and managed for revenue generation or sold.

**Substitute Bill Compared to Original Bill:**

The proposed substitute changes one of the criteria for determining when an aquatic investment property is eligible for sale by having the DNR determine through an economic analysis that selling the property is more advantageous than retaining the property. The original bill requires the minimum bid for selling the property to be equal to or greater than the net present value of retaining the property.

The proposed substitute corrects an internal reference, and makes technical changes allowing the newly created aquatic sustaining investment account to retain interest earnings.

The proposed substitute clarifies all moneys received from the sale of aquatic investment properties are deposited in the new account, and 25 percent of moneys received from leases are deposited in the new account.

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**Appropriation:** The sum of \$500,000 is appropriated from the aquatic sustaining investment account.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed, except sections 13 and 14. Section 13 expires and section 14 takes effect on July 1, 2006, allowing the new aquatic investment account to retain interest earnings.

**Testimony For:** This bill would give the DNR the tools to reposition certain filled tidelands that are difficult to manage, and increase the potential to generate additional funds. If the lands are no longer aquatic in nature and are not connected to the water, such as filled lands in south Seattle, the DNR could sell these lands and purchase functioning aquatic lands. The DNR has identified 13 properties for possible designation as aquatic investment properties, but the inventory is not complete. The current prohibition for selling tidelands and bedlands was based on a law passed in 1971 to prohibit the DNR from selling tidelands to generate money. There are certain circumstances where it makes economic sense to sell these lands and get a higher return for the state in the long run.

**Testimony Against:** None.

**Persons Testifying:** Representative Sullivan, prime sponsor; Loren Stern, Department of Natural Resources; and Eric Johnson, Washington Public Ports Association.

**Persons Signed In To Testify But Not Testifying:** None.